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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Promotion and protection of human rights, including ways and means to promote the human rights of migrants

Report of the Secretary-General

Summary

The present report, submitted in accordance with General Assembly resolution 64/166, contains a summary of communications submitted by Governments in response to the note verbale dated 8 June 2010 from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Secretary-General requesting information on the implementation of that resolution. The report also contains a summary of communications submitted by Governments in response to the note verbale sent on 11 June 2009 by the Office of the High Commissioner on behalf of the Secretary-General requesting information on the implementation of resolution 63/184. Moreover, the report provides information on the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and on the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, of the Special Rapporteur on the human rights of migrants, of the universal periodic review of the Human Rights Council, and of OHCHR, with particular reference to activities and partnerships in the context of promoting the rights of migrant children.

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I. Introduction

1. In paragraph 8 of its resolution 64/166, the General Assembly requested the Secretary-General to submit, at its sixty-fifth session, a report on the implementation of that resolution including an analysis of ways and means to promote the human rights of migrants, in particular children.

2. Parts II and III of the present report summarize responses received from Member States concerning the implementation of General Assembly resolutions 63/184 and 64/166, respectively.[1] The remainder of the report provides information on the activities of the Special Rapporteur on the human rights of migrants (part IV), the status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (part V), the activities of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (part VI), the universal periodic review of the Human Rights Council (part VII) and the activities of the Office of the United Nations High Commissioner for Human Rights (OHCHR), including collaboration with other United Nations agencies (part VIII). Part IX provides conclusions and recommendations.

II. Information from Governments with regard to the implementation of General Assembly resolution 63/184

3. As at 23 July 2009, replies concerning the implementation of General Assembly resolution 63/184 had been received from Egypt, Guatemala, Qatar, Serbia and Spain. Summaries of those responses are provided below. The full texts are available from OHCHR upon request.

Egypt

4. The Government noted that the Ministry of Manpower and Migration had adopted a number of policies to guarantee the welfare of Egyptians abroad, strengthen their ties with Egypt, organize and facilitate lawful migration, and integrate Egyptian migrant workers into host countries. The law on the migration and welfare of Egyptians abroad, No. 111 of 1983, stipulated that the State must protect Egyptian migrant workers and use all means to strengthen their ties with their home countries. According to the Central Bank of Egypt, the remittances sent back by Egyptian expatriates in 2007-2008 had totalled approximately $6.35 billion, making them the third largest source of national income, after the Suez Canal and petroleum.

5. The Ministry participated in local, regional and international conferences on migration, including legal and illegal migration, and on the relationship between migration and development in order to strengthen cooperation regarding the issues faced by Egyptian migrant workers. In addition, it had established a database on laws regulating residence and work in host countries and employment opportunities abroad as part of the Integrated Migration Information System project, in

[1] Part II includes responses to resolution 63/184 that were not included in the previous report (A/64/188), owing to their late submission.

cooperation with the Government of Italy and the International Organization for Migration (IOM).

6. Bilateral, regional and international agreements had been concluded with receiving States to regulate the movement of and increase demand for migrant workers, while efforts had been made to open up new employment prospects in African and European Union countries and in Canada. The Ministry of Manpower and Migration monitored the welfare of Egyptian workers abroad through labour representation offices located in 12 Arab States and in 3 European States, namely, Greece, Italy and Switzerland.

Guatemala

7. The Government reported that Guatemala was a country of origin, transit, destination and return. It stated that Guatemala had ratified the International Convention on the Protection of All Migrant Workers and Members of Their Families, noting that the Convention strengthens migrant protection provisions contained in general international human rights instruments.

8. The Government was concerned with the reintegration of deported Guatemalan migrants and its role as a country of transit for migrants from Central and South America.

9. The Constitution of Guatemala provided protection of the rights of all persons present on the national territory. The Labour Code regulated the rights and obligations of employers and migrant workers, and provided for the establishment of institutions for conflict resolution should the need arise. The Office of the Human Rights Ombudsman was mandated to monitor, protect and promote the rights of migrants and refugees in Guatemala, and had established a dedicated phone number to receive complaints from migrants who had been the victims of human rights violations.

10. On 30 June 2005, the Congress of Guatemala had signed decree 37-2007, which provided for the free movement of persons between El Salvador, Guatemala, Honduras and Nicaragua. Moreover, Guatemala participated actively in cooperative processes on migration, including the Regional Conference on Migration, and the Central American Commission for Migration.

Qatar

11. The Government of Qatar reported that the there were a number of mechanisms enabling migrant workers to submit complaints about violations of their human rights to the authorities, including the National Human Rights Committee, the Labour Department of the Ministry of Labour, and the Department of Human Rights. In the first instance, efforts were made to mediate between the employer and the migrant, before the case was referred to other authorities or to the courts. When migrant workers entered into contracts with employers, they received a copy of a workers' rights booklet, which set out their rights and obligations.

12. Article 36 of the Constitution guaranteed that no person could be arrested, detained or searched or have his or her freedom of residence and movement curtailed except in accordance with the law. The Code of Criminal Procedure set out

safeguards in respect of arrest, investigation, search and detention measures, as well as a prohibition against torture. Article 40 stipulated that the human dignity of prisoners must be respected and that they could not be subjected to physical or mental harm.

Serbia

13. The Government of Serbia reported that it had ratified the United Nations Convention against Transnational Organized Crime and two of the Protocols thereto in September 2001, and that it had signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in November 2004.

14. It was noted that Serbia continued to host a large number of refugees from the territories of the former Yugoslavia (97,354 as of early 2009). In addition, there were 209,722 internally displaced persons.

15. Serbia had signed some 17 bilateral readmission agreements and, in February 2009, had developed a strategy for the reintegration of readmitted persons, in order to ensure that returning migrants could reintegrate into society.

16. The Government reported that a new law on aliens had been enacted to govern the entry, movement and residence of aliens on the national territory. In addition, the asylum law of Serbia stipulated that no one could be returned to torture or cruel, inhuman or degrading treatment or punishment.

Spain

17. The Government of Spain reported that a reform of the law relating to foreigners would provide for a sustainable and coherent migration policy, as well as equality between nationals and non-nationals in relation to fundamental rights. With regard to the right to education, children younger than 18 were guaranteed the right to gain access to scholarships and grants for education on an equal footing with Spanish nationals.

18. The Government reported that organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration, had provided for the establishment of the Spanish Observatory on Racism and Xenophobia (article 71), which was mandated to conduct studies on, and formulate proposals for action to combat racism and xenophobia against migrants in Spain.

19. The Government reported that, in February 2007, the Council of Ministers had approved the Strategic Plan for Citizenship and Integration (2007-2010), which was based on fundamental principles of equality and non-discrimination between national and non-national communities. The Strategic Plan was focused on 12 thematic areas and established specific objectives, programmes and measures in those areas, which included education, employment, social services, health and the situation of children, adolescents and women.

III. Information from Governments with regard to the implementation of General Assembly resolution 64/166

20. As at 15 July 2010, the Governments of the following Member States had replied to the note verbale sent on 8 June 2010: Belarus, Greece, Japan, Lithuania, Mexico, Spain, Switzerland and Turkey. Summaries of those responses are provided below. The full texts are available from OHCHR upon request.

Belarus

21. The Government of Belarus reported that on 3 July 2009, a new law on the protection of foreign nationals and refugees had entered into force in Belarus. It concerned the determination of refugee status as well as protection from refoulement, in accordance with the international obligations of Belarus. The new law also addressed the issue of subsidiary protection.

22. The Government reported that it had ratified the Convention on the Rights of the Child. Non-national children, including asylum-seeking and refugee children, were entitled to primary and secondary education, on the same basis as nationals. Refugee and asylum-seeking children were also entitled to health care.

23. On 21 July 2010, new legislation on the legal status of foreign nationals and stateless persons in Belarus would come into force. The objectives of the management of migration flows were to promote sustainable socio-economic development, strengthen public security and protect the rights of migrants to Belarus, including by facilitating integration and fostering tolerance of migrant communities.

Greece

24. The Government of Greece reported that it was engaged in a number of activities to facilitate the integration of third-country nationals into Greek society, including vulnerable individuals such as women migrants and the children of migrants.

25. Such activities included information campaigns designed to educate migrants in the fields of health and education, intercultural mediation programmes conducted in selected hospitals in order to facilitate access to health services, and intercultural training programmes for personnel working in detention centres and juvenile custody and probation centres. The Government planned to facilitate a European conference on the theme "Social integration of migrants: good practices in the fields of health, welfare and social security".

Japan

26. The Government of Japan reported that it was in the process of ratifying the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, and that national implementation legislation to that effect had been finalized.

27. The Government reported that it sought to avoid as far as possible the detention of migrant children in an irregular situation, and would search for alternatives to detention, including placement with relatives or care in a child guidance centre. The Government reported that, where detention was unavoidable, including for humanitarian reasons, migrant children were afforded special measures, such as ensuring that the detention was as brief as possible. The Government noted that the principle of the best interests of the child also dictated that children be detained separately from unrelated adults and that they have access to leisure and play facilities.

28. The Government further noted that, in the case of non-nationals who were in an irregular situation but could not be deported owing to their age, ill health or other humanitarian reasons, careful consideration was given to their individual circumstances and provisional release was offered as an option in order to prevent prolonged detention.

29. The Government reported that migrant children were able to gain access to free education on the same basis as nationals and were provided with language and other support to facilitate their access. The Ministry of Justice had conducted a variety of awareness-raising activities on the themes "Respect the human rights of foreigners" and "Protect children's human rights". A bill aimed at establishing an independent national human rights institution was under consideration.

Lithuania

30. The Government of Lithuania reported that article 3 (2) of the Law on the Legal Status of Aliens of the Republic of Lithuania (*Official Gazette*, 2004, No. 73-2539) confirmed the principle that non-nationals were equal before the law, irrespective of their sex, race, nationality, language, origin, social status, religion, convictions or views.

31. The Government reported that it did not intend to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as it believed that the implementation of the provisions of the Convention would place too high a burden on the State budget.

32. Amendments to the Law on the Legal Status of Aliens had been drafted in order to implement directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008, on common standards and procedures in member States for returning illegally staying third-country nationals (*Official Journal of the European Union* L 348, 24.12.2008, pp. 98-107). The Government reported that, under those procedures, the duration of administrative detention for migrants in an irregular situation had been changed to no more than six months, unless their return was impeded by lack of cooperation or the absence of sufficient documents, in which case they could be detained for an additional 12 months.

33. The Government reported that the Law on the Legal Status of Aliens contained special provisions concerning unaccompanied children, and that State authorities were obliged to take into account their best interests, to ensure the protection of their interests and to locate their family members as soon as possible or appoint guardians.

34. By decree No. 1104 of 9 September 2009, the Government had adopted a new programme for the prevention and control of the trafficking in human beings for 2009-2012.

Mexico

35. The Government of Mexico reported that the migrant regularization programme, which had begun in 2008, had continued for 30 months. The programme was aimed at granting legal status under certain conditions — such as entry to the territory of the country prior to 1 January 2007 — to migrants who were irregularly present. The Government noted that migrants in an irregular situation were more vulnerable to human rights violations.

36. The Beta Group teams, created in 2000, had continued to work through 20 offices to provide protection and humanitarian assistance to migrants in transit at the border areas of Mexico. The Government reported that, under an agreement between the Ministry of Public Security and the International Committee of the Red Cross, workshops had been held on the issue of enforcement with respect to the human rights of vulnerable groups and migrant populations. The workshops had been aimed at managers and operational staff of the Federal Police in the 31 states of Mexico and the metropolitan area of Mexico City.

37. In respect of child migrants, the Government reported that, since 1996, it had operated a programme of child protection at the border, comprising a network of 23 shelters to provide protection and assistance to repatriated child and adolescent migrants. In addition, a special corps of 172 child protection officers had been officially created within the National Migration Institute in 2009, with particular attention accorded to the situation of unaccompanied migrant children (see Circular No. 001/2010, 12 February 2010). The third generation of child protection officers had attended training workshops in March and April 2009, and in November 2009 the Institute had extended training to such officers in Guatemala and El Salvador. In July 2009, Mexico had led efforts within the Regional Conference on Migration (Puebla Process) to develop the Regional Guidelines for Assistance to Unaccompanied Children in Cases of Repatriation, which incorporated the principle of the best interests of the child and committed member States to protecting unaccompanied children from abuse of their human rights.

Spain

38. The Government of Spain reported that, in accordance with the Convention on the Rights of the Child, all actions taken in respect of children, including unaccompanied children, had been based on the best interests of the child. Particular measures would be taken to determine the individual circumstances of unaccompanied children. The Government recognized the right of children to be heard in any judicial or administrative proceedings, including in relation to a determination as to whether it was safe to return an unaccompanied child to his or her country of origin. Such a determination would be made within the framework of a formal procedure to determine the best interests of the individual child. During the Spanish presidency of the European Union in the first half of 2010, an Action Plan on Unaccompanied Minors had been adopted, combining four main strands of

action: prevention, regional protection programmes, reception and the identification of durable solutions.

39. The Government reported that it had engaged in a number of cooperative processes on migration, at the multilateral, regional and bilateral levels, including through active participation in the Global Forum on Migration and Development.

Switzerland

40. The Government of Switzerland reported that it was engaged at several levels in cooperation and partnership in respect of migration. At the bilateral level, Switzerland was in the process of establishing migration partnerships with the Balkan countries and with Nigeria.

41. The new law on foreigners of 1 January 2008 provided for measures related to the admission of migrants from non-European Union member States, the timely improvement of their legal status, the facilitation of their integration and the combating of their abuse.

42. The Government noted that the treatment of all unaccompanied children was regulated by certain fundamental principles, including the best interests of the child, protection and the right to be heard. Where unaccompanied children were determined not to be refugees, a durable solution would take into account such factors as their age, their maturity and the degree of their integration into Switzerland. Such children could be granted provisional admission to Switzerland and would continue to benefit from the protection afforded to all children.

43. The Government noted that the principle of family unity was enshrined in article 44 of the asylum law, which provided that family members should not be separated and, if possible, should be granted the same legal status in Switzerland.

Turkey

44. The Government reported that the Ministry of the Interior was preparing a new "road map on asylum and migration". Work was under way on the drafting of asylum and migration laws that would align the asylum-migration legislation of Turkey with the European Union (EU) acquis.

IV. Activities of the Special Rapporteur on the human rights of migrants

45. The activities of the Special Rapporteur on the human rights of migrants are carried out in accordance with Human Rights Council resolution 8/10, by which the Council decided to extend the mandate of the Special Rapporteur on the human rights of migrants for a period of three years. Further thematic guidance on the activities of the Special Rapporteur was provided by the Council in its resolution 9/5 and its resolution S-10/1 (adopted at its tenth special session, entitled "The impact of the global economic and financial crises on the universal realization and effective enjoyment of human rights").

46. During the reporting period, the Special Rapporteur continued to advocate a human-rights-based approach to migration and the protection of the human rights of migrants at all stages of the migratory process. In discharging his mandate, the Special Rapporteur met with numerous representatives of international and regional organizations, as well as of civil society, to discuss relevant issues. He participated in a number of events on the protection of migrants, including the first meeting of the Permanent Forum of Arab-African Dialogue on Democracy and Human Rights, organized in December 2009 by the League of Arab States; an expert consultation on the right to education of international migrants, refugees and asylum-seekers, convened in January 2010 by the Special Rapporteur on the right to education with the support of the Open Society Institute; and the Global Consultation on Migrant Health, organized in March 2010 by IOM and the World Health Organization.

47. At the fourteenth session of the Human Rights Council, the Special Rapporteur presented his annual thematic report which focused on the right to health and adequate housing in the context of migration (A/HRC/14/30); a report on the communications sent to Governments and the replies received (A/HRC/14/30/Add.1); and reports on his country missions to Romania (A/HRC/14/30/Add.2) and the United Kingdom of Great Britain and Northern Ireland (A/HRC/14/30/Add.3). The Special Rapporteur also held an interactive dialogue with the Council.

48. The Special Rapporteur visited Senegal from 17 to 21 August 2009 and Japan from 23 to 31 March 2010, at the invitation of the respective Governments. The Special Rapporteur plans to undertake a country visit to South Africa in the second half of 2010, at the invitation of the Government. The Special Rapporteur will present his reports on the missions to Senegal and Japan at a session of the Human Rights Council in 2011. A comprehensive report on his activities between January 2009 and June 2010 will be submitted to the General Assembly at its sixty-fifth session, pursuant to paragraph 6 (d) of Assembly resolution 64/166.

V. Status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

49. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families entered into force on 1 July 2003. As at 15 July 2009, 43 States had ratified the Convention: Albania, Algeria, Argentina, Azerbaijan, Belize, Bolivia (Plurinational State of), Bosnia and Herzegovina, Burkina Faso, Cape Verde, Chile, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Guyana, Honduras, Jamaica, Kyrgyzstan, Lesotho, Libyan Arab Jamahiriya, Mali, Mauritania, Mexico, Morocco, Nicaragua, Niger, Nigeria, Paraguay, Peru, the Philippines, Rwanda, Senegal, Seychelles, Sri Lanka, the Syrian Arab Republic, Tajikistan, Timor-Leste, Turkey, Uganda and Uruguay. The Convention assists in ensuring a protective mechanism for the human rights of migrant workers and members of their families. The year 2010 marks the twentieth anniversary of the adoption of the Convention, and all Member States that have not yet become parties to the Convention are urged to consider acceding to that instrument and effectively implementing its provisions.

VI. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families

50. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, composed of 14 independent experts, monitors the implementation of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families by its States parties. Since its first session, held in March 2004, the Committee has considered the initial reports submitted by 13 States parties.

51. At its eleventh session, held from 12 to 16 October 2009, the Committee considered the initial report of Sri Lanka (CMW/C/LKA/1); at its twelfth session, held from 26 to 30 April 2010, the Committee considered the initial report of Algeria (CMW/C/DZA/1).[2]

52. On 14 October 2009, during its eleventh session, the Committee held a "Day of general discussion on migrant domestic workers". The event was aimed at promoting greater awareness of the particular situation of migrant domestic workers and their rights under international human rights law. It was also aimed at providing input to the debate at the ninety-ninth session of the International Labour Conference, in June 2010, during which the topic "Decent work for domestic workers" was discussed and the adoption of a new International Labour Organization (ILO) instrument on domestic workers was considered. The report on the day of general discussion, including the recommendations made by participants, is included in the annual report of the Committee (A/65/48).

53. Following the day of general discussion, the Committee decided to begin to draft a general comment on migrant domestic workers. During its twelfth session, the Committee considered, at private meetings, the first draft of the general comment.

54. Also at its twelfth session, the Committee agreed to organize, as part of the events planned for 2010 to mark the twentieth anniversary of the Convention, an open-ended day of discussion during its thirteenth session, to be held from 22 November to 3 December 2010. States and other partners would be invited to share experiences and views on how the Convention has influenced policy and practice to strengthen the protection of migrants.

VII. Universal periodic review of the Human Rights Council

55. In 2006, the General Assembly, in its resolution 60/251, decided that the Human Rights Council should undertake a universal periodic review of the fulfilment by each United Nations Member State of its human rights obligations and commitments. During the reviews of 128 States conducted during the first eight sessions of the Council Working Group on the Universal Periodic Review, in 2008,

[2] See the concluding observations of the Committee contained in documents CMW/C/LKA/CO/1 and CMW/C/DZA/CO/1.

2009 and 2010, recommendations were directed at a number of States concerning the protection of migrants.[3] Recommendations included: review national legislation and policies on migrants and ensure that they complied with international human rights law;[4] take treaty action, including with regard to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;[5] cooperate with the special procedures of the Council, including the Special Rapporteur on the human rights of migrants;[6] and implement the recommendations of United Nations human rights mechanisms.[7] Other recommendations concerned non-discrimination and equality, especially in terms of access to economic, social and cultural rights, including education and health services,[8] with particular reference to children and migrant women;[9] the elimination of criminal sanctions against undocumented migrants;[10] the consideration of measures alternative to the detention of migrants;[11] permitting access to justice and legal aid for migrant workers;[12] ensuring respect for the rights of migrants, particularly on the part of law enforcement officials;[13] and the strengthening and promotion of the integration of migrants.[14]

[3] The background documentation for the reviews also included information on the human rights of migrants, including information prepared by the State concerned, which could take the form of a national report, and two reports prepared by OHCHR: a compilation of United Nations information and a summary of input from stakeholders. All documentation regarding the universal periodic review is available at http://www.ohchr.org/EN/HRBodies/UPR.

[4] See, for example, A/HRC/8/22 and Corr.1, para. 75.6, A/HRC/8/30, para. 54.24, A/HRC/13/14, para. 91.23, A/HRC/13/15, paras. 89.76, 77 and 78, and A/HRC/14/2, paras. 85.20 and 21.

[5] See A/HRC/13/2, para. 79.14, A/HRC/13/3, paras. 88.8, 9, 10 and 22, A/HRC/13/7, paras. 87.2, 3, 4 and 5, A/HRC/13/5, paras. 106.3 and 107, A/HRC/13/8, paras. 94.5 and 7, A/HRC/13/9, para. 101.13, A/HRC/13/10, para. 104, A/HRC/13/14, paras. 90.10 and 91.3 and 5, A/HRC/13/15, para. 92.1, A/HRC/13/16, para. 71.7, A/HRC/13/17, para. 97.1, A/HRC/14/2, para. 85.1, A/HRC/14/6, paras. 99.4 and 7, A/HRC/14/4, para. 84.2, A/HRC/14/9, paras. 71.1 and 2, A/HRC/14/10, para. 97.1, A/HRC/14/11, paras. 87.14 and 19, and A/HRC/14/14, para. 82.4.

[6] See A/HRC/11/27, para. 93.80, and A/HRC/11/17, para. 86.18.

[7] See A/HRC/13/5, para. 105.7, and A/HRC/13/15, para. 89.83.

[8] See A/HRC/13/5, paras. 105.13, 14 and 15 and 106.17, 18, 20, 21, 28 and 41, A/HRC/13/10, paras. 101.12 and 42 and 102.11, A/HRC/13/15, paras. 89.67, 69 and 79, and A/HRC/14/4, paras. 84.25, 26 and 27 and 84.74 and 75.

[9] See A/HRC/8/19 and Corr.1, para. 40, A/HRC/8/47, para. 60.13, A/HRC/10/72, para. 53.16, A/HRC/8/40, paras. 64.8 and 15, A/HRC/10/75, paras. 91.18 and 21, A/HRC/13/5, paras. 105.10 and 106.15 and 16, A/HRC/14/2, para. 83.57, and A/HRC/14/4, para. 84.24.

[10] See A/HRC/8/44, para. 60.23, and A/HRC/11/15, para. 81.38.

[11] See A/HRC/13/7, para. 87.62.

[12] See A/HRC/8/44, para. 60.20, A/HRC/8/40, para. 64.32, A/HRC/11/23 and Corr.1, para. 87.43, and A/HRC/13/7, para. 87.61.

[13] See A/HRC/8/32, para. 67.9, A/HRC/13/5, para. 106.26, A/HRC/13/7, para. 87.4, A/HRC/13/14, paras. 91.22 and 24, A/HRC/13/10, paras. 101.10 and 40, A/HRC/14/5, para. 81.75, A/HRC/14/2, paras. 83.50 and 66, A/HRC/14/14, para. 81.122, A/HRC/14/17, para. 95.8, and A/HRC/14/4, paras. 84.79, 80 and 81.

[14] See A/HRC/13/5, paras. 105.19 and 20, and A/HRC/13/10, paras. 101.41 and 102.21.

VIII. Activities of the Office of the United Nations High Commissioner for Human Rights

56. OHCHR continues its efforts to strengthen the protection of the human rights of migrants and to ensure that the perspective of those rights is included in migration discussions at the national, regional and global levels.

57. The High Commissioner for Human Rights has noted with concern that while migration can be an empowering experience for some, many other migrants fall into protection gaps and are subject to discrimination, marginalization and exclusion. Persistent anti-migrant sentiments, often bolstered by official pronouncements and policy directions, can create a public atmosphere hostile to the presence of migrants. Such sentiments are reinforced by legislation, regulations and policies criminalize and exclude migrants. The High Commissioner for Human Rights has called on States to ensure that xenophobic discourse and violence against migrants has no place in their societies.

58. In particular, OHCHR has raised awareness about violations of the human rights of children in the context of migration. Often the object of suspicion, neglect and abuse, migrant children are locked up in immigration detention centres, denied access to essential services because of their status, or that of their parents and subjected to the same regimes of criminalization as adult migrants. Yet, the international legal framework provides unequivocally that all children, regardless of their legal status or categorization, should be treated and protected first and foremost as children. OHCHR continues to call on States to ratify and effectively implement all international human rights instruments relevant to the protection of children in the context of migration, including the Convention on the Rights of the Child and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

59. OHCHR has engaged with key partners on a number of initiatives to protect and promote children's rights in the context of migration. An open-ended expert consultation on the protection of the rights of the child in the context of migration was held in Geneva on 25 May 2010.[15] Expert panellists from United Nations agencies and non-governmental organizations and academia addressed such issues as children in immigration detention, child protection systems and best-interest determinations, and the economic, social and cultural rights of migrant children.

60. A study on "Protecting the rights of the child in the context of migration" was prepared by OHCHR for submission to the Human Rights Council at its fifteenth session, in September 2010.

61. OHCHR collaborated with the United Nations Children's Fund (UNICEF) on a number of activities in relation to promoting the rights of migrant children. These included the production, together with the International Labour Organization (ILO), of a joint fact sheet on "The impact of the economic crisis on migration and children's rights" for the Third Meeting of the Global Forum on Migration and Development, held in Athens from 2 to 5 November 2009, in relation to the open-ended consultation and the study of the Human Rights Council on "Protecting the

[15] For an informal report on the consultation and links to the expert presentations and to interventions by participants in the audience, see http://www2.ohchr.org/english/issues/migration/consultation/index.htm.

rights of the child in the context of migration"; and the production of a joint "Training manual to fight trafficking in children for labour, sexual and other forms of exploitation" under the United Nations Global Initiative to Fight Human Trafficking. In June 2010, OHCHR signed, together with UNICEF, the United Nations High Commissioner for Refugees (UNHCR) and IOM, a joint letter to the Spanish presidency of the European Union on the subject of the EU Action Plan on Unaccompanied Minors (2010-2014).

62. OHCHR supports efforts to promote the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, including through the International Steering Committee of the Global Campaign for Ratification of the Convention, which is coordinated by the Office. The Steering Committee is a network comprising international and regional civil society organizations, IOM, ILO, OHCHR and the United Nations Educational, Scientific and Cultural Organization. In the light of the twentieth anniversary of the Convention, the Steering Committee launched a global campaign, calling on Governments to act immediately to end widespread human rights violations against migrants around the world by ratifying the Convention. A poster and other campaign materials have been developed, and a petition has been launched through the Steering Committee's website to urge countries to ratify the Convention. Organizations members of the Steering Committee also support the campaign, by organizing local activities in the countries targeted.

63. OHCHR has continued to be an active member of the Global Migration Group and, in the context of that body, has sought to promote and mainstream a human rights approach to migration within the United Nations system. The Office contributed to the organization of a Global Migration Group Practitioners Symposium on the theme "Overcoming barriers: building partnerships for migration and human development", held in Geneva on 27 and 28 May 2010. OHCHR contributed a background paper to the Symposium entitled "Rooting migration policies in human rights: ensuring the rights of all migrants and improving human development outcomes", and facilitated the proceedings of a workshop on migrants' human rights.[16] On 1 July 2010, OHCHR took over as Chair of the Group.

64. OHCHR has continued to urge that greater attention be given to the human rights dimension of migration within the Global Forum on Migration and Development. On 8 October 2009, the Office held an open-ended expert consultation in Geneva to explore the relationship between the human rights of migrants — in particular the inclusion, acceptance and integration of migrants in host societies — and migrants' contribution to development in both origin and destination countries. The meeting was aimed at providing support to States and other stakeholders preparing for a round-table discussion held in November 2009 during the Third Meeting of the Global Forum on Migration and Development, in Athens, and devoted to the theme "Inclusion, protection and acceptance of migrants in society: linking human rights and migrant empowerment for development".

65. In its resolution 11/9, the Human Rights Council decided to hold, at its twelfth session, a panel discussion on the human rights of migrants in detention centres. The panel discussion, held in Geneva on 17 September 2009, addressed increasing

[16] See http://www.globalmigrationgroup.org/gmg_symposium.htm for more information on the Practitioners Symposium, as well as links to the OHCHR background paper.

concerns related to the recourse by States to the administrative detention of migrants, as well as to the duration and conditions of their detention. Its main objectives were: (a) to discuss current trends, good practices, challenges and possible approaches in addressing the issue of the administrative detention of migrants and to explore ways to promote and protect their human rights; and (b) to consider how to reduce the recourse to and duration of detention for persons entering or remaining in a country in an irregular manner and how to provide them with appropriate access to legal due process. In the course of the panel discussion, States expressed support for the search for alternatives to immigration detention.[17]

66. Through its field presences, OHCHR has also increasingly engaged in migration-related human rights work through the promotion of the Convention and other relevant human rights instruments, training activities, advocacy, technical advice and other initiatives, including the following:

(a) The Regional Office for Central America represented OHCHR at a number of seminars and conferences, including the Regional Conference on Refugee Protection and International Migration in the Americas: Protection Considerations in the Context of Mixed Migration (San José, 19-20 November 2009), for which the Office prepared a background note for the working group on "the rights of migrants, irrespective of their status". The Office was also represented at the second Ibero-American Forum on Migration and Development (22-23 July 2010), where the regional representative delivered a speech on the rights of migrants in the context of the economic crisis. Finally, the Office participated in a course on refugee law, organized by UNHCR and focusing on the challenges of mixed migration flows and the need for a human-rights-based approach to migration. The Office also participated in a number of training sessions: two organized by UNHCR for personnel of migrant detention centres, in order to raise their awareness about, inter alia, the rights of migrants under administrative detention and the protection of trafficked persons; and one session organized for border guards in the region, regarding basic human rights standards, particularly in the context of the protection of unaccompanied or separated children and trafficked persons, as well as basic principles related to the use of force;

(b) The Regional Office for West Africa organized a capacity-building workshop on the role that national human rights institutions could play in the context of migration in West Africa (Bamako, 12 November 2009). The workshop focused on follow-up to the commitments made under the Santa Cruz Declaration, adopted during the Eighth International Conference of National Institutions for the Promotion and Protection of Human Rights. The Office also participated in a round table, organized by IOM, on "International migration law and policies: responding to migration challenges in Western and Northern Africa" (Dakar, 8-9 December 2009). Finally, the Office co-facilitated a three-day training course on the protection of migrants in the region of the Economic Community of West African States (ECOWAS), organized by IOM in Ouagadougou from 7 to 9 April, with participants from Benin, Burkina Faso, Niger and Togo. The event was held in the context of the ECOWAS Migration Dialogue for West Africa and was aimed at building on the recommendations of the regional conference on refugee protection and international migration in West Africa organized by the Office together with UNHCR, IOM and

[17] See http://www2.ohchr.org/english/issues/migration/taskforce/HRC_panel_discussion.htm for an informal summary of the panel discussion.

ECOWAS in November 2008. In addition, and in collaboration with the Government of Senegal, the Office provided logistical and substantial support for the country visit to Senegal carried out in August 2009 by the Special Rapporteur on the human rights of migrants;

(c) The Regional Office for Southern Africa began a year-long project (June 2010-June 2011) aimed at giving effect to the theme "Embrace diversity, end discrimination", announced by the High Commissioner for Human Rights on Human Rights Day 2009, by strengthening the South African Human Rights Commission in its work to combat discrimination and xenophobia against migrants. Specifically, the project will build the Commission's capacity to provide legal support to migrants, to protect the rights of non-nationals in detention facilities and to prevent xenophobia and violence against non-nationals through awareness-raising and capacity-building activities, and will support its work to address racism and other forms of discrimination, including the implementation of the national action plan arising from the Durban Declaration and Programme of Action;

(d) The Regional Office for Europe, with the participation of the ILO-Brussels Office, organized a legal colloquium on international human rights instruments and their applicability to the promotion and protection of the human rights of migrant women domestic workers in Europe (Brussels, 25-26 May 2010), with the participation of, inter alia, the Chair of the Committee on Migrant Workers and representatives of EU member States, the European Commission, United Nations agencies, civil society organizations and national human rights institutions. In addition, the Regional Office, together with partner United Nations agencies, actively engaged with EU institutions to integrate international human rights standards into two important initiatives: the Action Plan on Unaccompanied Minors (2010-2014) and the formulation of a directive on preventing and combating human trafficking and protecting victims. Finally, the Office participated in a training session on protecting the rights of domestic migrant workers, organized by Caritas Europa and entitled "Fighting for visibility and justice".

IX. Conclusions and recommendations

67. **The Secretary General:**

(a) **Welcomes the information received from Member States concerning legislation, regulations and policies to strengthen the protection of the human rights of migrants;**

(b) **Encourages States to include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to protect the human rights of migrants;**

(c) **Encourages the Special Rapporteur on the human rights of migrants to continue to promote the protection of the human rights of migrants through his dialogue with Member States;**

(d) **Encourages States to ratify all relevant international human rights instruments, and particularly to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Secretary-General further encourages States parties to make declarations under articles 76 and 77 of the Convention recognizing the**

competence of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to receive and consider inter-State and individual complaints;

(e) Underlines that States have an obligation under the core international human rights instruments to protect the human rights of all individuals under their jurisdiction, regardless of their nationality or their migratory status;

(f) Asks States to ensure that in all actions concerning migrant children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child is a primary consideration;

(g) Urges States to integrate the rights and participation of migrant children into the formulation, implementation and monitoring of all relevant legislation and administrative regulations, including childhood policies and plans on access to essential services, as well as migration policies. Where appropriate, national human rights institutions and ombudspersons should be given a mandate to monitor, promote and protect the rights of migrant children;

(h) Calls on States to end the criminalization of irregular migrants. Administrative immigration detention should be a measure of last resort, and States should first explore adequate alternatives to such detention. In particular, children should not be detained on the basis of their migratory status or their irregular entry to the country;

(i) Recommends the adoption of comprehensive national plans of action, informed by international human rights standards, to strengthen the protection of migrants. National strategies and plans of action on such issues as eliminating racism and xenophobia, and protecting economic, social and cultural rights, should include migrants and pay specific attention to the situation of migrant children;

(j) Urges States to achieve policy coherence at the national, regional and international levels regarding the various issues associated with migration in order to protect the human rights of migrants. This should include ensuring coordinated child protection policies and systems across borders that are in full compliance with international human rights standards.